

Union Calendar No. 352

108TH CONGRESS
2D SESSION

H. R. 338

[Report No. 108–587]

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2003

Mr. CHABOT introduced the following bill; which was referred to the
Committee on the Judiciary

JULY 7, 2004

Additional sponsors: Mr. NADLER, Mr. BOUCHER, Mr. PAUL, Mr. FILNER,
Mr. BARTLETT of Maryland, Mr. STUPAK, and Mr. CANNON

JULY 7, 2004

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 27, 2003]

A BILL

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Federal Agency Protec-*
5 *tion of Privacy Act of 2004”.*

6 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**
7 **INTO CONSIDERATION IMPACTS ON INDIV-**
8 **IDUAL PRIVACY.**

9 *(a) IN GENERAL.—Title 5, United States Code, is*
10 *amended by adding after section 553 the following new sec-*
11 *tion:*

12 **“§ 553a. Privacy impact assessment in rulemaking**

13 **“(a) INITIAL PRIVACY IMPACT ASSESSMENT.—**

14 **“(1) IN GENERAL.—Whenever an agency is re-**
15 **quired by section 553 of this title, or any other law,**
16 **to publish a general notice of proposed rulemaking for**
17 **a proposed rule, or publishes a notice of proposed**
18 **rulemaking for an interpretative rule involving the**
19 **internal revenue laws of the United States, and such**
20 **rule or proposed rulemaking pertains to the collection,**
21 **maintenance, use, or disclosure of personally identifi-**
22 **able information from 10 or more individuals, other**
23 **than agencies, instrumentalities, or employees of the**
24 **Federal government, the agency shall prepare and**
25 **make available for public comment an initial privacy**

1 *impact assessment that describes the impact of the*
2 *proposed rule on the privacy of individuals. Such as-*
3 *essment or a summary thereof shall be signed by the*
4 *senior agency official with primary responsibility for*
5 *privacy policy and be published in the Federal Reg-*
6 *ister at the time of the publication of a general notice*
7 *of proposed rulemaking for the rule.*

8 “(2) CONTENTS.—*Each initial privacy impact*
9 *assessment required under this subsection shall con-*
10 *tain the following:*

11 “(A) *A description and analysis of the ex-*
12 *tent to which the proposed rule will impact the*
13 *privacy interests of individuals, including the*
14 *extent to which the proposed rule—*

15 “(i) *provides notice of the collection of*
16 *personally identifiable information, and*
17 *specifies what personally identifiable infor-*
18 *mation is to be collected and how it is to be*
19 *collected, maintained, used, and disclosed;*

20 “(ii) *allows access to such information*
21 *by the person to whom the personally iden-*
22 *tifiable information pertains and provides*
23 *an opportunity to correct inaccuracies;*

1 “(iii) prevents such information, which
2 is collected for one purpose, from being used
3 for another purpose; and

4 “(iv) provides security for such infor-
5 mation.

6 “(B) A description of any significant alter-
7 natives to the proposed rule which accomplish
8 the stated objectives of applicable statutes and
9 which minimize any significant privacy impact
10 of the proposed rule on individuals.

11 “(b) *FINAL PRIVACY IMPACT ASSESSMENT.*—

12 “(1) *IN GENERAL.*—Whenever an agency promul-
13 gates a final rule under section 553 of this title, after
14 being required by that section or any other law to
15 publish a general notice of proposed rulemaking, or
16 promulgates a final interpretative rule involving the
17 internal revenue laws of the United States, and such
18 rule or proposed rulemaking pertains to the collection,
19 maintenance, use, or disclosure of personally identifi-
20 able information from 10 or more individuals, other
21 than agencies, instrumentalities, or employees of the
22 Federal government, the agency shall prepare a final
23 privacy impact assessment, signed by the senior agen-
24 cy official with primary responsibility for privacy
25 policy.

1 “(2) *CONTENTS.*—*Each final privacy impact as-*
2 *essment required under this subsection shall contain*
3 *the following:*

4 “(A) *A description and analysis of the ex-*
5 *tent to which the final rule will impact the pri-*
6 *vacv interests of individuals, including the ex-*
7 *tent to which such rule—*

8 “(i) *provides notice of the collection of*
9 *personally identifiable information, and*
10 *specifies what personally identifiable infor-*
11 *mation is to be collected and how it is to be*
12 *collected, maintained, used, and disclosed;*

13 “(ii) *allows access to such information*
14 *by the person to whom the personally iden-*
15 *tifiable information pertains and provides*
16 *an opportunity to correct inaccuracies;*

17 “(iii) *prevents such information, which*
18 *is collected for one purpose, from being used*
19 *for another purpose; and*

20 “(iv) *provides security for such infor-*
21 *mation.*

22 “(B) *A summary of any significant issues*
23 *raised by the public comments in response to the*
24 *initial privacy impact assessment, a summary of*
25 *the analysis of the agency of such issues, and a*

1 *statement of any changes made in such rule as*
2 *a result of such issues.*

3 “(C) *A description of the steps the agency*
4 *has taken to minimize the significant privacy*
5 *impact on individuals consistent with the stated*
6 *objectives of applicable statutes, including a*
7 *statement of the factual, policy, and legal reasons*
8 *for selecting the alternative adopted in the final*
9 *rule and why each one of the other significant*
10 *alternatives to the rule considered by the agency*
11 *which affect the privacy interests of individuals*
12 *was rejected.*

13 “(3) *AVAILABILITY TO PUBLIC.—The agency*
14 *shall make copies of the final privacy impact assess-*
15 *ment available to members of the public and shall*
16 *publish in the Federal Register such assessment or a*
17 *summary thereof.*

18 “(c) *WAIVERS.—*

19 “(1) *EMERGENCIES.—An agency head may*
20 *wave or delay the completion of some or all of the*
21 *requirements of subsections (a) and (b) to the same*
22 *extent as the agency head may, under section 608,*
23 *wave or delay the completion of some or all of the*
24 *requirements of sections 603 and 604, respectively.*

1 “(2) *NATIONAL SECURITY.*—An agency head
2 may, for national security reasons, or to protect from
3 disclosure classified information, confidential com-
4 mercial information, or information the disclosure of
5 which may adversely affect a law enforcement effort,
6 waive or delay the completion of some or all of the
7 following requirements:

8 “(A) *The requirement of subsection (a)(1) to*
9 *make an assessment available for public com-*
10 *ment.*

11 “(B) *The requirement of subsection (a)(1) to*
12 *have an assessment or summary thereof pub-*
13 *lished in the Federal Register.*

14 “(C) *The requirements of subsection (b)(3).*

15 “(d) *PROCEDURES FOR GATHERING COMMENTS.*—
16 When any rule is promulgated which may have a signifi-
17 cant privacy impact on individuals, or a privacy impact
18 on a substantial number of individuals, the head of the
19 agency promulgating the rule or the official of the agency
20 with statutory responsibility for the promulgation of the
21 rule shall assure that individuals have been given an oppor-
22 tunity to participate in the rulemaking for the rule through
23 techniques such as—

24 “(1) *the inclusion in an advance notice of pro-*
25 *posed rulemaking, if issued, of a statement that the*

1 *proposed rule may have a significant privacy impact*
2 *on individuals, or a privacy impact on a substantial*
3 *number of individuals;*

4 *“(2) the publication of a general notice of pro-*
5 *posed rulemaking in publications of national circula-*
6 *tion likely to be obtained by individuals;*

7 *“(3) the direct notification of interested individ-*
8 *uals;*

9 *“(4) the conduct of open conferences or public*
10 *hearings concerning the rule for individuals, includ-*
11 *ing soliciting and receiving comments over computer*
12 *networks; and*

13 *“(5) the adoption or modification of agency pro-*
14 *cedural rules to reduce the cost or complexity of par-*
15 *ticipation in the rulemaking by individuals.*

16 *“(e) PERIODIC REVIEW OF RULES.—*

17 *“(1) IN GENERAL.—Each agency shall carry out*
18 *a periodic review of the rules promulgated by the*
19 *agency that have a significant privacy impact on in-*
20 *dividuals, or a privacy impact on a substantial num-*
21 *ber of individuals. Under such periodic review, the*
22 *agency shall determine, for each such rule, whether*
23 *the rule can be amended or rescinded in a manner*
24 *that minimizes any such impact while remaining in*
25 *accordance with applicable statutes. For each such de-*

1 *termination, the agency shall consider the following*
2 *factors:*

3 “(A) *The continued need for the rule.*

4 “(B) *The nature of complaints or comments*
5 *received from the public concerning the rule.*

6 “(C) *The complexity of the rule.*

7 “(D) *The extent to which the rule overlaps,*
8 *duplicates, or conflicts with other Federal rules,*
9 *and, to the extent feasible, with State and local*
10 *governmental rules.*

11 “(E) *The length of time since the rule was*
12 *last reviewed under this subsection.*

13 “(F) *The degree to which technology, eco-*
14 *nomie conditions, or other factors have changed*
15 *in the area affected by the rule since the rule was*
16 *last reviewed under this subsection.*

17 “(2) *PLAN REQUIRED.—Each agency shall carry*
18 *out the periodic review required by paragraph (1) in*
19 *accordance with a plan published by such agency in*
20 *the Federal Register. Each such plan shall provide for*
21 *the review under this subsection of each rule promul-*
22 *gated by the agency not later than 10 years after the*
23 *date on which such rule was published as the final*
24 *rule and, thereafter, not later than 10 years after the*
25 *date on which such rule was last reviewed under this*

1 subsection. The agency may amend such plan at any
2 time by publishing the revision in the Federal Reg-
3 ister.

4 “(3) ANNUAL PUBLICATION.—Each year, each
5 agency shall publish in the Federal Register a list of
6 the rules to be reviewed by such agency under this
7 subsection during the following year. The list shall in-
8 clude a brief description of each such rule and the
9 need for and legal basis of such rule and shall invite
10 public comment upon the determination to be made
11 under this subsection with respect to such rule.

12 “(f) JUDICIAL REVIEW.—

13 “(1) IN GENERAL.—For any rule subject to this
14 section, an individual who is adversely affected or ag-
15 grieved by final agency action is entitled to judicial
16 review of agency compliance with the requirements of
17 subsections (b) and (c) in accordance with chapter 7.
18 Agency compliance with subsection (d) shall be judi-
19 cially reviewable in connection with judicial review of
20 subsection (b).

21 “(2) JURISDICTION.—Each court having juris-
22 diction to review such rule for compliance with sec-
23 tion 553, or under any other provision of law, shall
24 have jurisdiction to review any claims of noncompli-
25 ance with subsections (b) and (c) in accordance with

1 *chapter 7. Agency compliance with subsection (d)*
2 *shall be judicially reviewable in connection with judi-*
3 *cial review of subsection (b).*

4 “(3) *LIMITATIONS.—*

5 “(A) *An individual may seek such review*
6 *during the period beginning on the date of final*
7 *agency action and ending 1 year later, except*
8 *that where a provision of law requires that an*
9 *action challenging a final agency action be com-*
10 *menced before the expiration of 1 year, such less-*
11 *er period shall apply to an action for judicial re-*
12 *view under this subsection.*

13 “(B) *In the case where an agency delays the*
14 *issuance of a final privacy impact assessment*
15 *pursuant to subsection (c), an action for judicial*
16 *review under this section shall be filed not later*
17 *than—*

18 “(i) *1 year after the date the assess-*
19 *ment is made available to the public; or*

20 “(ii) *where a provision of law requires*
21 *that an action challenging a final agency*
22 *regulation be commenced before the expira-*
23 *tion of the 1-year period, the number of*
24 *days specified in such provision of law that*

1 is after the date the assessment is made
2 available to the public.

3 “(4) *RELIEF*.—In granting any relief in an ac-
4 tion under this subsection, the court shall order the
5 agency to take corrective action consistent with this
6 section and chapter 7, including, but not limited to—

7 “(A) remanding the rule to the agency; and

8 “(B) deferring the enforcement of the rule
9 against individuals, unless the court finds that
10 continued enforcement of the rule is in the public
11 interest.

12 “(5) *RULE OF CONSTRUCTION*.—Nothing in this
13 subsection shall be construed to limit the authority of
14 any court to stay the effective date of any rule or pro-
15 vision thereof under any other provision of law or to
16 grant any other relief in addition to the requirements
17 of this subsection.

18 “(6) *RECORD OF AGENCY ACTION*.—In an action
19 for the judicial review of a rule, the privacy impact
20 assessment for such rule, including an assessment pre-
21 pared or corrected pursuant to paragraph (4), shall
22 constitute part of the entire record of agency action
23 in connection with such review.

24 “(7) *EXCLUSIVITY*.—Compliance or noncompli-
25 ance by an agency with the provisions of this section

1 *shall be subject to judicial review only in accordance*
 2 *with this subsection.*

3 “(8) *SAVINGS CLAUSE.*—*Nothing in this sub-*
 4 *section bars judicial review of any other impact state-*
 5 *ment or similar assessment required by any other law*
 6 *if judicial review of such statement or assessment is*
 7 *otherwise permitted by law.*

8 “(g) *DEFINITION.*—*For purposes of this section, the*
 9 *term ‘personally identifiable information’ means informa-*
 10 *tion that can be used to identify an individual, including*
 11 *such individual’s name, address, telephone number, photo-*
 12 *graph, social security number or other identifying informa-*
 13 *tion. It includes information about such individual’s med-*
 14 *ical or financial condition.’”.*

15 “(b) *PERIODIC REVIEW TRANSITION PROVISIONS.*—

16 (1) *INITIAL PLAN.*—*For each agency, the plan*
 17 *required by subsection (e) of section 553a of title 5,*
 18 *United States Code (as added by subsection (a)), shall*
 19 *be published not later than 180 days after the date of*
 20 *the enactment of this Act.*

21 (2) *In the case of a rule promulgated by an*
 22 *agency before the date of the enactment of this Act,*
 23 *such plan shall provide for the periodic review of such*
 24 *rule before the expiration of the 10-year period begin-*
 25 *ning on the date of the enactment of this Act. For any*

1 *such rule, the head of the agency may provide for a*
2 *1-year extension of such period if the head of the*
3 *agency, before the expiration of the period, certifies in*
4 *a statement published in the Federal Register that re-*
5 *viewing such rule before the expiration of the period*
6 *is not feasible. The head of the agency may provide*
7 *for additional 1-year extensions of the period pursu-*
8 *ant to the preceding sentence, but in no event may the*
9 *period exceed 15 years.*

10 *(c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B)*
11 *of title 5, United States Code, is amended—*

12 *(1) by redesignating clauses (iii) and (iv) as*
13 *clauses (iv) and (v), respectively; and*

14 *(2) by inserting after clause (ii) the following*
15 *new clause:*

16 *“(iii) the agency’s actions relevant to section*
17 *553a;”.*

18 *(d) CLERICAL AMENDMENT.—The table of sections at*
19 *the beginning of chapter 5 of title 5, United States Code,*
20 *is amended by adding after the item relating to section 553*
21 *the following new item:*

“553a. Privacy impact assessment in rulemaking.”.

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[Report No. 108-587]

A BILL

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